

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

DAMIAN MARTIN, on behalf of himself and all
others similarly situated,
Plaintiffs,

v.

CASE NO.: 1:23-cv-08114-FB-RER

SHOEWEEL, INC.,

Defendant.

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT**

Defendant, Shoewell, Inc. ("Defendant"), through undersigned counsel and pursuant to Federal Rules of Civil Procedure 8 and 12, answer the Complaint (Doc. 1) filed by Plaintiff, Damian Martin ("Plaintiff"), and assert defenses and affirmative defenses as follows:

INTRODUCTION

1. Defendant admits that Plaintiff brings this action against Shoewell, Inc., but denies the remaining allegations in Paragraph 1 of the Complaint.
2. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 2 of the Complaint.
3. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 3 of the Complaint.
4. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 4 of the Complaint. Defendant further denies that their website is inaccessible as alleged in this paragraph.

5. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 5 of the Complaint.
6. Defendant denies that their website is inaccessible as alleged in Paragraph 5 of the Complaint.

JURISDICTION AND VENUE

7. Defendant admits that the Court has subject-matter jurisdiction over this matter
8. Defendant denies that Court has supplemental jurisdiction over this matter.
9. Defendant admits that Venue is proper, but denies the remaining allegations in Paragraph 9 of the Complaint.
10. Defendant admits that it is subject to personal jurisdiction in the Eastern District of New York but denies the remaining allegations in Paragraph 9 of the Complaint.
11. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 11 of the Complaint. Defendant further denies that their website is inaccessible as alleged in this paragraph.
12. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 12 of the Complaint. Defendant further denies that their website is inaccessible as alleged in this paragraph.

THE PARTIES

13. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 6 of the Complaint.
14. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 7 of the Complaint.

15. Defendant admits that it does business in the present jurisdiction.

16. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 16 of the Complaint.

STANDING

17. Defendant is without sufficient knowledge or belief to admit or deny the allegations and, therefore, denies the allegations in Paragraph 17 of the Complaint.

18. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 8 of the Complaint.

19. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 19 of the Complaint.

20. Defendant denies the allegations in Paragraph 20 of the Complaint.

21. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 9 of the Complaint.

22. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 10 of the Complaint.

23. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 11 of the Complaint.

24. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 12 of the Complaint.

25. Defendant denies the allegations in Paragraph 25 of the Complaint.

26. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 26 of the Complaint.

27. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 27 of the Complaint.

28. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 13 of the Complaint.

29. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 14 of the Complaint.

NATURE OF ACTIONS

30. Defendant admits that the internet has become a great source of information as referenced in Paragraph 30 of the Complaint.

31. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 31 of the Complaint.

32. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 32 of the Complaint.

33. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 33 of the Complaint.

34. Defendant admits the allegations in Paragraph 34 of the Complaint.

35. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 35, including subsections a-q, of the Complaint.

36. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 36 of the Complaint.

STATEMENT OF FACTS

37. Defendant admits the allegations in Paragraph 37 of the Complaint.
38. Defendant admits the allegations in Paragraph 38 of the Complaint.
39. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 39 of the Complaint.
40. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 40 of the Complaint.
41. Defendant admits to the products offered on its website but is without sufficient knowledge or belief to admit or deny Plaintiff allegations of desired to buy and therefore denies the allegations in Paragraph 41 of the Complaint.
42. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 415 of the Complaint.
43. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 43 of the Complaint.
44. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 44 of the Complaint.
45. Defendant denies the allegations in Paragraph 45 of the Complaint.
46. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 46 of the Complaint.
47. Defendant denies the allegations in Paragraph 47 of the Complaint.
48. Defendant denies the allegations in Paragraph 48 of the Complaint.
49. Defendant denies the allegations in Paragraph 49 of the Complaint.

50. Defendant is without sufficient knowledge or belief to admit or deny the allegations and therefore denies the allegations in Paragraph 50 of the Complaint.

51. Defendant denies the allegations in Paragraph 51, including subsections a-c of the Complaint.

52. Defendant denies the allegations in Paragraph 52 of the Complaint.

53. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 53 of the Complaint.

54. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 16, including subsections a-d, of the Complaint.

55. Defendant denies the allegations in Paragraph 55 of the Complaint.

56. Defendant denies the allegations in Paragraph 56 of the Complaint.

57. Defendant denies the allegations in Paragraph 57 oof the Complaint.

CLASS ACTION ALLEGATIONS

58. Defendant admits Plaintiff seeks to certify a class but denies the case is appropriate for class treatment as alleged in Paragraph 58 of the Complaint.

59. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 59 of the Complaint.

60. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 60, including subsections a-d, of the Complaint.

61. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 61 of the Complaint.

62. Defendant denies the allegations in Paragraph 62 of the Complaint.

63. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 63 of the Complaint.

64. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 64 of the Complaint.

FIRST CAUSE OF ACTION

(Violation of 42 U.S.C. §§ 12181 et seq.)

65. Defendant repeats each and every response to the allegations contained in the preceding paragraphs of this Complaint.

66. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 66 of the Complaint.

67. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 67 of the Complaint.

68. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 68 of the Complaint.

69. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 69 of the Complaint.

70. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 70 of the Complaint.

71. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 71 of the Complaint.

72. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 72 of the Complaint.

SECOND CAUSE OF ACTION

(Violation of New York State Human Rights Law, N.Y. Exec. Law)

73. Defendant repeats each and every response to the allegations contained in the preceding paragraphs of this Complaint.

74. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 74 of the Complaint.

75. Defendant admits the allegations in Paragraph 75 of the Complaint.

76. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 19 of the Complaint.

77. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 77 of the Complaint.

78. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 20 of the Complaint.

79. This Paragraph and its subsections set forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 21 of the Complaint.

80. Defendant denies the allegations in Paragraph 80 of the Complaint.

81. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 81 of the Complaint.

82. Defendant denies the allegations in Paragraph 82 of the Complaint.

83. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 83 of the Complaint.

84. Defendant denies the allegations in Paragraph 22 of the Complaint.

85. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 85 of the Complaint.

THIRD CAUSE OF ACTION
(Declaratory Relief)

86. Defendant repeats each and every response to the allegations contained in the preceding paragraphs of this Complaint.

87. This Paragraph sets forth a legal conclusion for which Defendant can neither admit nor deny, and, therefore, denies the allegations in Paragraph 24 of the Complaint.

88. Defendant denies the allegations in Paragraph 25 of the Complaint.

PRAYER FOR RELIEF

In response to WHEREFORE Paragraph following Paragraph 88 of the Complaint, including subsections, Defendant denies all factual allegations and denies that Plaintiff is entitled to any relief in this action.

GENERAL DENIAL

All allegations in the Complaint not expressly admitted are denied.

FIRST DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiff's claims are barred, in whole or in part, because the website is accessible.

THIRD DEFENSE

If any of the unlawful acts and omissions alleged in the Complaint were engaged in by Defendant, which Defendant vigorously denies, they did not engage in such acts or omissions knowingly, intentionally or willfully, and therefore, Plaintiff's claims for liquidated damages are barred.

FOURTH DEFENSE

Defendant cannot fully anticipate all defenses which may be applicable to this action. Accordingly, the right to assert additional defenses, to the extent such defenses are applicable, is hereby reserved.

Dated this 22th day of December 2023.

Respectfully submitted,
SPIRE LAW, LLC
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By: /s/ Ian E. Smith
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CERTIFICATE OF SERVICE

I hereby certify that on this 22th day of December 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Ian Smith
Attorney